

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the First Amended
Accusation Against:**

Gregory O. Colburn, M.D.

**Physician's & Surgeon's
Certificate No G 57384**

Respondent.

Case No.: 800-2019-053566

**DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION**

No action having been taken on the petition for reconsideration, filed by Patric Hooper, Esq., on behalf of Respondent, Gregory O. Colburn, M.D., and the time for action having expired at 5:00 p.m. on March 17, 2023, the petition is deemed denied by operation of law.

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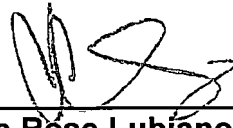
DECISION

**The attached Proposed Decision is hereby adopted as the Decision
and Order of the Medical Board of California, Department of Consumer
Affairs, State of California.**

This Decision shall become effective at 5:00 p.m. on March 17, 2023.

IT IS SO ORDERED February 15, 2023.

MEDICAL BOARD OF CALIFORNIA



**Laurie Rose Lubiano, J.D., Chair
Panel A**

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
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STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation Against:

GREGORY O. COLBURN, M.D.,

Physician's and Surgeon's Certificate No. G 57384

Respondent.

Agency Case No. 800-2019-053566

OAH No. 2022090656

PROPOSED DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on January 9, 2023, by videoconference and telephone.

Supervising Deputy Attorney General Mary Cain-Simon represented complainant William Prasifka, Executive Director of the Medical Board of California.

Attorney Patric Hooper represented respondent Gregory O. Colburn, M.D., who was not present at hearing.

The matter was submitted for decision on January 9, 2023.

FACTUAL FINDINGS

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number G 57384 to respondent Gregory O. Colburn, M.D., on June 9, 1986. The certificate is renewed and current with an expiration date of March 31, 2024. There is no prior discipline against the certificate. Respondent is a radiation oncologist.

2. Acting in his official capacity as Executive Director of the Board, complainant William Prasifka filed an accusation against respondent on March 10, 2022, and filed a first amended accusation against respondent on September 1, 2022. Complainant seeks to impose discipline and recover costs, based on respondent's felony fraud conviction and the underlying dishonest acts. Respondent filed a notice of defense and this hearing followed.

Criminal Conviction and Underlying Conduct

3. In 2019, respondent, along with his wife and a number of co-defendants, was indicted and charged with federal crimes involving fraud and dishonesty.

4. At a hearing on December 7, 2021, in the United States District Court for the District of Massachusetts, respondent pleaded guilty to a felony charge of conspiracy to commit mail fraud, wire fraud, honest services mail fraud, and honest services wire fraud, in violation of Title 18, United States Code, sections 1341, 1343, 1346, and 1349.

During that plea hearing, the prosecutor set forth the facts that the government would have proved at trial, including the following:

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- In 2017, respondent and his wife engaged William "Rick" Singer to provide college counseling services for their son, who had been previously approved to receive academic accommodations and extended time at his high school in Palo Alto. Singer operated a non-profit organization called the Key Worldwide Foundation (KWF) in addition to his college counseling business.
- Respondent participated in a scheme with Singer and others to defraud the College Board (the organization that administers the SAT examination in conjunction with Educational Testing Services). Respondent paid \$25,000 for Singer to bribe a test administrator and to have another person pose as a proctor for respondent's son's SAT examination and secretly correct the son's answers.
- After respondent's son was approved to receive accommodations of extended time to take the SAT examination over multiple days, respondent's wife arranged for the testing location to be moved from the son's high school in Palo Alto to a testing site in West Hollywood that was run by a test administrator collaborating with Singer in the fraud scheme.
- In December 2017, respondent approved a transfer of more than \$24,400 in stock to KWF, pursuant to a letter of authorization stating the transfer was a charitable contribution. Respondent then signed a check for \$547.45 payable to KWF with "charitable contribution" listed in the memo line. KWF issued a letter signed by Singer, stating that respondent's \$25,000 payment was for

educational and self-enrichment programs for disadvantaged youth, and that no goods or services were exchanged for the payment.¹

- In March 2018, respondent, his wife, and their son flew to Southern California, and the person posing as a proctor flew from Florida to Los Angeles. Respondent's son took the SAT examination at the West Hollywood site, and the person posing as a proctor secretly corrected the son's answers. Singer had directed that person not to obtain too high a score for the son, so as not to raise any "red flags," given the son's grades.
- The completed SAT examination was sent to the College Board, and the resulting SAT score was submitted to colleges in connection with the college admission applications of respondent's son.
- In October 2018, after being approached by law enforcement, Singer made a recorded telephone call to respondent and his wife. As a ruse, Singer stated the IRS was auditing his non-profit organization and asked about their payment. Singer said he was not going to tell the IRS that the proctor "took the test for your son," to which respondent replied: "No. I got that, yes." Singer said he told the IRS respondent's \$25,000 payment "went to help our foundation to help underserved kids, but we both know that [the proctor] took the test for your son," to which respondent said: "Got it. No problem."

¹ Respondent and his wife provided this letter to their tax preparers and deducted the \$25,000 payment on their taxes as a charitable contribution. After criminal charges were brought, they amended their return to eliminate the deduction.

After the prosecutor recited the above facts (among others) at the plea hearing, the court asked respondent: "Do you disagree with anything that he says the government would be able to prove?" Respondent answered that he did not. He then entered a guilty plea.

5. Respondent's plea was a conditional plea of guilty, reserving his right to appeal the denial of a motion to dismiss. This motion raised legal arguments as to whether test scores can constitute "property" for the purpose of mail or wire fraud, and whether the indictment adequately alleged facts to establish test administrators owed a fiduciary duty of honest services to testing companies. If respondent were to win these arguments on appeal, he preserved the right to withdraw his guilty plea.

6. Respondent appeared at a sentencing hearing on April 14, 2022. When asked if he wished to address the court before sentence was imposed, respondent stated: "I'd just like to say that I deeply regret my involvement in this matter and I fully accept responsibility for my conduct therein."

7. Judgment was imposed on April 14, 2022, and respondent was found guilty of felony conspiracy to commit mail fraud, wire fraud, honest services mail fraud, and honest services wire fraud, in violation of Title 18, United States Code, sections 1341, 1343, 1346, and 1349. Respondent was sentenced to serve eight weeks in prison, beginning on May 26, 2022, to be followed by a one-year term of supervised release, on terms including completion of 100 hours of community service and payment of a \$12,500 fine within 30 days of sentencing.

Respondent's Evidence

8. Respondent did not appear or testify at hearing in this matter, or offer any written statement other than a legal brief written by his attorney.

9. Respondent provided a set of character reference letters that were addressed to the federal court in early 2022 urging leniency in sentencing. The writers described respondent as a skilled and compassionate physician, and a person of high moral character. The writers also described the negative impact that the criminal proceedings had upon respondent and his family. The writers did not provide any information regarding respondent's expressed reasons for committing fraudulent and dishonest acts, any demonstration of remorse by respondent for his misconduct, or rehabilitative activities undertaken by respondent.

10. Respondent did not offer any other documents, or any witnesses.

Costs

11. The Board seeks to recover a total of \$10,129.95 in costs for investigation and enforcement in this case for expenses actually incurred after January 1, 2022. These costs include \$8,676.25 for attorney and paralegal time billed by the Department of Justice; \$1,248.00 in costs for investigator time; and \$205.70 to obtain a transcript from the federal court proceedings. The claim for \$10,129.95 in incurred costs is supported by declarations that comply with California Code of Regulations, title 1, section 1042, and is found to be reasonable.

12. The declaration regarding prosecution costs also included an estimate of \$2,200 for additional attorney time to be incurred prior to hearing, but no supplemental declaration was provided, and no explanation was offered as to why actual cost information was not available, in compliance with California Code of Regulations, title 1, section 1042, subdivision (b)(3). The additional \$2,200 is not found to be reasonable.

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LEGAL CONCLUSIONS

1. It is complainant's burden to establish the truth of the allegations by "clear and convincing evidence to a reasonable certainty," and that the allegations constitute cause for discipline of respondent's physician's and surgeon's certificate. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The burden of establishing mitigation or rehabilitation is on respondent and the standard of proof is a preponderance of the evidence. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164; Evid. Code, §§ 115, 500.)

First Cause for Discipline (Unprofessional Conduct, Ethical Violations, Dishonest or Corrupt Act)

2. The Board may discipline respondent's physician's and surgeon's certificate if he has engaged in unprofessional conduct. (Bus. & Prof. Code, §§ 2227, 2234.) Unprofessional conduct is conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

Among other things, unprofessional conduct includes the commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon. (*Id.*, § 2234, subd. (e).) California Code of Regulations, title 16, section 1360, provides that a crime or act is substantially related to the qualifications, functions, or duties of a physician and surgeon "if to a substantial degree it evidences present or potential unfitness of a person holding a license . . . to perform the functions authorized by the license . . . in a manner consistent with the public health, safety or welfare."

Respondent contends that his conduct is not substantially related to his qualifications, functions, or duties as a doctor. This argument is rejected. The courts have long held that the practice of medicine requires honesty in dealing with patients, government agencies, and insurance carriers, and that intentionally dishonest conduct constitutes grounds for discipline of a medical license. (See, e.g., *Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305-306; *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470; *Krain v. Medical Board of California* (1999) 71 Cal.App.4th 1416, 1422-1423.)

Respondent engaged in unprofessional conduct by reason of his dishonest and corrupt acts. (Factual Findings 3-4, 6.) Cause for discipline exists pursuant to Business and Professions Code section 2234, subdivision (e).

Second Cause for Discipline (Conviction)

3. Business and Professions Code section 2236, subdivision (a), authorizes the Board to impose discipline against any licensee who has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a physician and surgeon. (See Cal. Code Regs., tit. 16, § 1360 [defining substantially related].)

Respondent was convicted of a felony fraud offense, as set forth in Factual Findings 3 through 7. Respondent contends that his conviction is not substantially related to his qualifications, functions, or duties as a doctor. That contention is rejected, for the reasons stated in Legal Conclusion 2.

Respondent also contends that he may succeed on criminal appeal regarding the legal questions he reserved in his conditional plea of guilty (see Factual Finding 5), and that he would then be allowed to withdraw his guilty plea. That contention is irrelevant in these administrative proceedings. As matters stand now, respondent has

been convicted. Even if respondent is, at some point in the future, allowed to withdraw his guilty plea, that does not preclude the Board from imposing discipline. (See *Krain v. Medical Board of California*, *supra*, 71 Cal.App.4th at p. 1422-1423 [conviction can constitute grounds for license discipline, even if conviction or plea is later expunged or set aside].)

Respondent also argues that the Board's failure to utilize the procedures established in Business and Professions Code section 2236.1 for automatic suspension upon incarceration should void the instant proceedings, which are based on an accusation. Respondent's contention is unsupported and is rejected.

Cause for discipline based on respondent's substantially related conviction exists pursuant to Business and Professions Code section 2236, subdivision (a).

Determination of Discipline

4. Cause for discipline having been established, the remaining issue is the appropriate level of discipline. The purpose of an administrative proceeding concerning licensure is not to punish the respondent, but rather is "to protect the public from dishonest, immoral, disreputable or incompetent practitioners [citations omitted]." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The goal is the prevention of future harm and the improvement and rehabilitation of the licensee. It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.) While the objective, wherever possible, is to take action that is calculated to aid in the rehabilitation of the licensee, protection of the public shall be paramount. (Bus. & Prof. Code, § 2001.1.)

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The Medical Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (Guidelines) (12th ed., 2016) recommends, at a minimum, stayed revocation and five years' probation for unprofessional conduct including dishonest acts, or stayed revocation and seven years' probation for a felony conviction that is substantially related to but not arising from the practice of medicine. The maximum discipline is revocation.

Respondent argues that no discipline should be imposed.

Complainant argues that if respondent had provided evidence of mitigation or rehabilitation, a probationary term would be appropriate, but that in this case revocation of respondent's certificate is necessary to protect the public.

At hearing in this matter, respondent failed to provide any explanation for his actions, mitigation evidence, or evidence of rehabilitation to demonstrate that he can be trusted to practice medicine in a manner consistent with public safety, or that he is willing and able to comply with the Board's conditions of probation. Upon this record, there is no basis to impose anything other than the maximum discipline. Protection of the public requires revocation of respondent's certificate.

Costs

5. A licensee found to have committed a violation of the licensing act may be required to pay the Board the reasonable costs of its investigation and prosecution of the case. (Bus. & Prof. Code, § 125.3.) Respondent has committed violations of the licensing act. (Legal Conclusions 2 & 3.) As set forth in Factual Finding 11, the reasonable costs of investigation and prosecution in this matter are \$10,129.95.

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6. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth standards for determining whether costs should be assessed in the particular circumstances of each case, to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his or her position, whether the licensee raised a colorable challenge to the proposed discipline, financial ability of the licensee to pay, and whether the scope of investigation was appropriate to the alleged misconduct. None of these considerations support reducing the Board's cost recovery in this case.

ORDER

1. Physician's and Surgeon's Certificate No. G 57384, issued to respondent Gregory O. Colburn, M.D., is revoked.

2. Respondent Gregory O. Colburn, M.D., shall pay to the Medical Board of California \$10,129.95 as reimbursement for its costs of investigation and enforcement.

DATE: **01/31/2023**



HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings